

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ANTHONY B. WINGFIELD,
#1896078,

Plaintiff,

V.

UNKNOWN GARNER, et al.,

Defendants.

Case No. 6:21-cv-320-JDK-KNM

ORDER ADOPTING REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Anthony B. Wingfield, a Texas Department of Criminal Justice inmate proceeding pro se, brings this civil rights lawsuit under 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell pursuant to 28 U.S.C. § 636. Before the Court is Defendants Clinton Ellis, Joi Garner, Susan Cunningham, and Sarah Mershon's motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Docket No. 31.

On August 8, 2023, Judge Mitchell issued a Report and Recommendation recommending that the Court grant Defendants' motion to dismiss and dismiss Plaintiff's claims under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Docket No. 34. Specifically, the Magistrate Judge found that Plaintiff failed to provide facts allowing an inference that any named Defendant knew of and then disregarded a substantial risk of serious harm to him resulting from the confiscation of his shoes. *See Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006). She also

determined that Plaintiff failed to state a claim under the Americans with Disabilities Act (ADA) because, in part, Plaintiff failed to allege any facts from which a reasonable factfinder could conclude that any alleged discrimination was intentional. *See Foley v. City of Lafayette*, 359 F.3d 925, 930–31 (7th Cir. 2004). A copy of this Report was sent to Plaintiff, and Plaintiff filed timely objections. Docket No. 35.

Where a party timely objects to the Report and Recommendation, the Court reviews the objected-to findings and conclusions of the Magistrate Judge de novo. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

The Court overrules Plaintiff’s objections. The objections fail to address the legal substance of the Magistrate Judge’s Report, and they do not identify any specific errors. Instead, Plaintiff reargues his claims and notes that the record is “clear.”

Having conducted a de novo review of the record in this case and the Magistrate Judge’s Report, the Court has determined that the Report of the Magistrate Judge is correct, and Plaintiff’s objections are without merit. Accordingly, the Court hereby **ADOPTS** the Report of the Magistrate Judge (Docket No. 34) as the opinion of the District Court and **GRANTS** Defendants’ motion to dismiss (Docket No. 31). Plaintiff’s claims are **DISMISSED** with prejudice for lack of jurisdiction and failure to state a claim upon which relief can be granted.

So **ORDERED** and **SIGNED** this **7th** day of **September, 2023**.

A handwritten signature in black ink, reading "Jeremy D. Kernodle". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE